

Government of the District of Columbia

ZONING COMMISSION



ZONING COMMISSION ORDER NO. 831-A

CASE NO. 96-7C

**(Consolidated PUD and Map Amendment at
3133 Connecticut Ave., N.W. — The Kennedy – Warren)
Order on Remand
December 11, 2000**

The District of Columbia Court of Appeals, in *Cathedral Park Condominium Committee v. District of Columbia Zoning Commission*, 743 A.2d 1231 (D.C. 2000), vacated Zoning Commission Order No. 831 in Z.C. Case No. 96-7C, which had granted the Klingle Corporation application for a planned unit development (PUD) and associated rezoning to add a new wing to the Kennedy-Warren apartment building, and remanded the case to the Commission for further proceedings.

First, the Court required the Commission to address whether the proposed PUD is not inconsistent with the Comprehensive Plan for the National Capital, Title 10 DCMR, in light of the low density provision in 10 DCMR § 1407.3(c). Section 1407.3(c) provides that:

Development adjacent to parks which are designated landmarks must be low density and shall be further restricted where advisable to protect unstable soils, eliminate runoff potential, and promote a green buffer between the built environment and these natural settings; development must avoid any adverse effect (known or plausibly suspected) on these landmarks, including the water quality, flora, and fauna, and should minimize any intrusion on views from these parks.

Specifically, the Court indicated that the Commission should amplify its findings to address whether (1) the proposed PUD would not be a “low density” development within the meaning of 10 DCMR § 1407.3(c); (2) the National Zoo and/or Klingle Valley are “landmark parks” for purposes of that section; and (3) the proposed PUD is “adjacent” to Klingle Valley and/or the National Zoo for purposes of that section. If the Commission finds in the affirmative, the Court directed the Commission to address whether and to what extent the application of Section 1407.3(c) to the proposed PUD is limited, for example, by other Comprehensive Plan provisions or by ameliorative measures. In light of its answers to these questions and any other relevant information, the Court instructed the Commission to explain its ultimate conclusion regarding the consistency of the proposed PUD with the Comprehensive Plan as a whole. *See* 743 A.2d at 1241-42. For the reasons stated below, the Commission determined that the proposed PUD is not a “low density” development; the National Zoo and Klingle Valley are “landmark parks”; the proposed PUD is adjacent to Klingle Valley and the National Zoo; the application of

section 1407.3(c) is limited by other provisions of the Comprehensive Plan, including the Land Use Element which is given greater weight in interpreting the Plan, as well as by the guidelines, conditions, and standards established in Z.C. Order No. 831 which serve to protect the National Zoo and Klinge Valley from potential adverse effects; and (5) the proposed PUD is not inconsistent with the Plan as a whole in light of the Commission's findings and conclusions in this order.

Second, the Court directed the Commission to revisit the question of consistency with the provisions in 10 DCMR §§ 1407.3(d) and 1409.4(a)(3) relating to the protection of green space in Ward 3. Section 1407.3(d) provides:

Many of the apartment buildings along Connecticut Avenue, such as Cathedral Mansions, the Kennedy-Warren, and the Broadmoor, were built with great swaths of green space in front or large interior open spaces as a response to building style and the zoning regulations in the 1920s, and open space in common ownership now adjoins other historic apartment buildings in the ward: where these open spaces are recognized to contribute to the integrity of the site or structure, stringent protection from inappropriate infill shall be maintained.

Under section 1409.4(a)(3), the Ward 3 residential neighborhood objectives, policies, and actions include "ensur[ing] stringent protection against infill at inappropriate locations." Section 1409.4(a)(3)(b) provides:

Examples of inappropriate infill locations include the swaths of green space fronting many apartment buildings, particularly along Connecticut Avenue (such as Cathedral Mansions, the Kennedy-Warren, and the Broadmoor); the few large interior spaces of certain blocks on Connecticut Avenue, particularly those behind historic apartment buildings or adjacent to park lands; and on very large lots in single-family neighborhoods.

The Court indicated that the Commission should address whether the Kennedy-Warren green space contributes to the integrity of the site or structure at the present time. To the extent the Commission considers the original intent to develop that green space to be relevant to or dispositive of that question, the Court required the Commission to explain how and why. *See* 743 A.2d at 1244. As discussed below, the Commission determined that the original intent to develop the green space is a relevant consideration because the original design preserves the architectural and historical integrity of the existing building. The green space upon which the proposed addition would be built does not contribute to the integrity of the site or structure at the present time because the addition would provide the Kennedy-Warren with a more cohesive design in the present, retain and define the most architecturally significant portions of the green space, and frame and define the National Zoo entrance.

Further, the Court left it open for the Commission to consider the impact on the application, if any, of the Comprehensive Plan Amendment Act of 1998, effective April 27, 1999 (D.C. Law 12-275; 46 D.C. Reg. 1441 (1999)). *See* 743 A.2d at 1237 n.5. As discussed below, the

Commission determined that none of the pertinent amendments, which are minor in nature, would require the Commission to disapprove the proposed PUD and associated rezoning or to modify the guidelines, conditions, and standards of approval that were established in Z.C. Order No. 831.

The Court of Appeals affirmed the Commission's decision in all other respects. Having amplified its Findings of Fact and Conclusions of Law pursuant to the Court's instructions, the Commission determined to reinstate Z.C. Order No. 831, as supplemented by this order on remand.

PRELIMINARY MATTERS

Three of the Zoning Commission members who are to decide the case on remand, Anthony J. Hood, Carol J. Mitten, and Kwasi Holman, were not members of the Commission at the time of the hearing on the application. Pursuant to 11 DCMR § 3005.12, these members read the transcript and reviewed the complete record in order to participate and vote in the remand proceedings.

To assist the Commission in its proceedings on remand, the Commission requested the parties to each submit opening and reply briefs, addressing the questions presented by the Court. The Kennedy-Warren Residents Association, Inc., a party to the Zoning Commission case, advised the Commission that it is unable to offer an independent opinion due to its agreement with the applicant, the Klingle Corporation. Advisory Neighborhood Commission (ANC) 3-C, the ANC for the area within which the subject property is located, did not submit a brief.

The Klingle Corporation and the Cathedral Park Condominium Committee (CPC), a party in opposition, submitted opening and reply briefs. The Klingle Corporation attached to its May 26, 2000, reply brief a copy of a letter dated November 26, 1997, from Phil Mendelson, then-chairperson of ANC 3-C, to Linda Cropp, Chairperson of the Council of the District of Columbia, relating to proposed amendments to the Ward 3 Plan of the Comprehensive Plan concerning the Kennedy-Warren. At its July 10, 2000, public meeting, the Commission determined that it would not consider the letter or any arguments related to the letter in making its decision on remand since the letter is not part of the exclusive record¹ for Z.C. Case No. 96-7C, the applicant did not request the Commission to re-open or supplement the record, there was no showing that the letter could not have been submitted at the time of hearing on the application, and CPC did not have an opportunity to respond to the new evidence and related arguments submitted in the Klingle Corporation reply brief.

There are seven affidavits and copies of three letters accompanying the CPC's May 12, 2000, opening brief, none of which are part of the exclusive record. The CPC also attached to its May

¹ The record in this contested case closed at the end of the public hearing, except for information specifically requested by the Commission. Tr. at 105 (Mar. 24, 1997); see 11 DCMR § 3024. Under Section 3022.9, "In a contested case proceeding under this chapter, no decision or order of the Commission on an application or petition shall be made except upon the exclusive record of the proceedings before the Commission."

26, 2000, reply brief two affidavits and the National Zoo visitors map, a memorandum and related documents regarding historical elements in the revised preliminary master plan for the National Zoo, and a May 26, 2000, letter from CPC to the Director of the Office of Zoning and the Zoning Administrator, none of which are part of the exclusive record. The Commission determined at its July 10, 2000, public meeting that it would not consider these documents or any arguments based upon them in making its decision on remand since they are not part of the exclusive record; there was no request to re-open or supplement the record; there was no showing that the documents or the information that they contain could not have been submitted at the time of the hearing on the application or, in the case of the May 26, 2000, letter, that it is relevant to the remand issues; the Klinge Corporation did not have an opportunity to cross-examine the affiants or other witnesses as to the new letters and documents; and the Klinge Corporation did not have an opportunity to respond to the new evidence and arguments submitted in the CPC reply brief.

As the Commission afforded the parties the opportunity to brief the issues on remand, the CPC's request for oral argument was denied.

At its public meeting on October 16, 2000, the Zoning Commission, by a 4 to 1 vote, adopted this proposed order supplementing and reinstating Z.C. Order No. 831, approving the proposed PUD and associated rezoning, subject to the guidelines, conditions, and standards established in Z.C. Order No. 831.

Since the majority of the Commission members did not personally hear the evidence in this case, section 1509(d) of the District of Columbia Administrative Procedure Act, D.C. Code § 1-1509(d) (1999 Repl.), requires the Commission to send a proposed order to the parties and to afford each party adversely affected the opportunity to present exceptions and present arguments, which may be either oral or in the form of briefs or memoranda. *See Palisades Citizens Ass'n, Inc. v. District of Columbia Zoning Comm'n*, 368 A.2d 1143, 1145 n.6 (D.C. 1977). At its October 16, 2000, public meeting the Commission determined to allow the parties three weeks from the date of mailing of the proposed order to file written exceptions and arguments. At its public meeting on December 11, 2000, the Commission reviewed the written comments received from the applicant, CPC, and the Kennedy-Warren Residents Association, made several minor modifications to the proposed order, and voted to adopt it as the final order on remand.

The Commission makes the following findings of fact and conclusions of law in response to the questions presented on remand:

FINDINGS OF FACT

The Low Density Provision

1. As the Commission previously found in Z.C. Order No. 831, the proposed south wing addition would contain 194,358 square feet of gross floor area, bringing the total gross floor area

of the building to 714,733 square feet and the floor area ratio to 6.29. It would provide 166 new apartment units.

2. The National Zoological Park and the Rock Creek Park Historic District, which includes Klinge Valley, are landmarks listed in the D.C. Inventory of Historic Sites and the National Register of Historic Places.

3. The proposed PUD is separated from the National Zoo and Klinge Valley by Jewett Street, a public right-of-way.

4. Finding of Fact No. 5 in Z.C. Order No. 831 states that the “south and east sides of the property abut a partially built public street (Jewett Street) and adjoin the National Zoological Park; the north side of the property abuts Klinge Valley.” In Finding No. 10, the Commission describes the location of the Kennedy-Warren as “next to the open space of Klinge Valley and the National Zoo.” The Commission found in Finding No. 21 that “The Kennedy-Warren is surrounded by open space by virtue of its adjacency to Klinge Valley and the Zoo.” Finding No. 22 describes the rear of the Kennedy-Warren as “adjacent to Klinge Valley.” Finding No. 63 also describes Klinge Valley as “adjacent” to the Kennedy-Warren.

5. The Generalized Land Use Map of the Comprehensive Plan designates the entire Kennedy-Warren site, including the open space, for high density residential land use. The Land Use Element of the Comprehensive Plan, in Section 1103.4, describes high-rise apartment buildings as the predominant use in the high density residential land use category. *See* Tr. at 51-52 (Jan. 6, 1997).

6. Other provisions of the Comprehensive Plan encourage housing, particularly in close proximity to Metrorail stations, and the enhancement of historic properties.

7. There is a long history of high density development on the Kennedy-Warren site.

8. The D.C. Office of Planning concluded that the proposed PUD is not inconsistent with the Comprehensive Plan and the Comprehensive Plan map designation for the site. Ex. 48 (OP Report at 3, 7); Tr. at 151 (Jan. 6, 1997). The Office of Planning also concluded that the proposed PUD is not inconsistent with the Comprehensive Plan in that it “is designed to provide additional rental units to the District of Columbia’s rental housing market which is supported by numerous policies and objectives in the Comprehensive Plan.” Ex. 48 (OP Report at 3).

9. Jewett Street separates the proposed PUD from the National Zoo and Klinge Valley, with the portion of Jewett Street to be closed serving as a buffer to the National Zoo and Klinge Valley.

10. William R. Shields, superintendent of Rock Creek Park, stated that the construction of the south wing would have no visible impact on Klinge Valley, the part of Rock Creek Park abutting the Kennedy-Warren. Tr. at 52 (Feb. 20, 1997). He stated further that “The actual construction of any addition to the building facing Connecticut Avenue has no aesthetic effect on

the park, because it cannot be seen from the valley.” Tr. at 66 (Feb. 27, 1997); *see also* Ex. 255 (Letter from National Park Service to the Zoning Commission dated Feb. 27, 1997) (“Due to the location of the proposed addition, there does not appear to be a visible impact from areas of Klinge Valley.”).

11. Mr. Shields stated that the preservation of trees within the Jewett Street right-of-way and located between the Kennedy-Warren and the National Zoo is a major concern in that it represents a valuable natural linkage to Klinge Valley, as well as providing a protective buffer to the National Zoo and Klinge Valley. The Klinge Valley Rehabilitation Area and Tree Preservation Zone required in Z.C. Order No. 831 address the cleanup of contaminated soils, stabilization of soils through erosion control measures and plantings, protection of trees, and landscaping and screening for Klinge Valley. *See* Tr. at 51-70 (Feb. 20, 1997); Ex. 255; *see also* Tr. at 14-21 (Feb. 20, 1997) (testimony of Guy Williams, Klinge Corporation landscape architect).

12. Mr. Shields also explained that the applicant had proffered, at the National Park Service’s suggestion, the legal services necessary to undertake the formal closure of the portion of Jewett Street between the Kennedy-Warren and the National Zoo, with the majority of land, approximately 42 feet in width, to be transferred to the Zoo to assure that the forest cover will be protected in this area. A minor portion of the Jewett Street right-of-way would likely be transferred to the National Park Service for the purpose of straightening out the Klinge Valley boundary. The applicant also committed to construct a permanent fence along the new boundary that will meet Zoo standards. Mr. Shields stated that the fence would further assure the protection of existing trees and the preservation of this forested corridor. Tr. at 55-57 (Feb. 27, 1997); Ex. 255.

13. Robin Vasa, assistant director for facilities and construction at the National Zoological Park, stated that the proposed PUD would have no impact on internal Zoo operations and that the Zoo was neutral as to its construction. Ms. Vasa also confirmed that the Zoo has no aesthetic objection to the proposed PUD. Tr. at 74-75 (Feb. 20, 1997).

14. The part of the National Zoo that is closest to the Klinge Corporation property is the Zoo parking lot and service drive. The main entrance to the Zoo, the ceremonial entrance, is 330 feet south of the proposed addition and screened by a densely wooded berm. The south wing would have virtually no impact on the Zoo’s main entrance. Tr. at 10 (Mar. 24, 1997).

15. The applicant’s architect testified that there would be a storm water management facility on the site that would drain into a storm water sewer in Connecticut Avenue. It would not connect to the storm and sanitary sewers that are currently coming out of the existing building into Klinge Valley. Tr. at 71 (Jan. 6, 1997). There is no evidence that the proposed PUD would result in unstable soils, erosion, or runoff problems that would not be prevented or controlled.

16. ANC 3-C, in its written report dated January 23, 1997, offered qualified support for the application, subject to the provision of additional parking and other conditions. The ANC found that, with the exception of parking, the proposed PUD “provides a commendable number and

quality of public benefits.” Ex. 166 (ANC report at 2), *see also* Ex. 170 (ANC letter clarifying report). Among other conditions, the ANC recommended that the Zoning Commission require (1) the establishment of a Klinge Valley rehabilitation area on the north side of the existing building, to include a comprehensive cleanup; correction and rehabilitation of erosion; stabilization of land by introducing new soil, trees, and ground cover; additional screening and improvements to the exterior of the building on the Klinge Valley side; and additional landscaping as agreed to with the National Park Service; (2) compliance with a tree preservation plan; (3) that the owner apply for and process the permanent closure of Jewett Street on the east side of the property, with 42 feet of the 50-foot right-of-way being dedicated to the National Zoo and the National Park Service; (4) a storm water management system connecting into an existing line under Connecticut Avenue; and (5) the provision of 50 street trees for the greater Woodley Park and adjacent areas and upgrading the landscaping of the subject property. Ex. 166 (ANC Report at 3-4).

17. The Zoning Commission, in Z.C. Order No. 831, required among other things, that the applicant work with the National Park Service to address stormwater management; undertake a cleanup, rehabilitation, and improvement of the “Klinge Valley Rehabilitation Area” along the north side of the existing Kennedy-Warren; improve the aesthetic appearance of the Kennedy-Warren from the Rehabilitation Area through the introduction of landscaping and screening; establish a Tree Preservation Zone “to perpetuate the long-term viability of this area as a buffer between the building and the federal property”; and process, at the applicant’s expense, an application to close Jewett Street on the east side of the property, with 42 feet of the 50-foot right-of-way dedicated to the National Park Service and the National Zoo and, upon closure of the street, construct a permanent fence along the new boundary. (Condition No. 13). The Commission also required the applicant to provide 20 street trees for planting in the greater Woodley Park and adjacent areas. (Condition No. 15).

The Green Space Provisions

18. The Kennedy-Warren was built in two stages in 1931 and 1935. It is listed in the D.C. Inventory of Historic Sites and the National Register of Historic Places. Although building permits were issued in 1930 and 1931, the south wing, which was included in the original 1929 Art Deco design for the building, was never constructed due to the onset of the Great Depression. The proposed PUD would complete the south wing in a manner closely following the design and footprint of the original plans. Ex. 21 (Application at 1-2, 5-6, 8-9).

19. Warren Cox and Graham Davidson of Hartman-Cox Architects, who were qualified as experts in architecture and preservation architecture before the Commission, testified, and the Commission finds, that the proposed addition would enhance the Kennedy-Warren landmark if it is completed as intended rather than left as an unfinished project.

20. The existing building occupies only the northern portion of the lot, leaving the site unbalanced and the southern portion vacant. Construction of the south wing would properly

organize the plan for the site and allow for the orderly development of the property. Ex. 21 (Application at 46).

21. The building as designed would be symmetrical, with a southern “tail” holding the street line on Connecticut Avenue. Tr. at 29 (Jan. 6, 1997). The façade on Connecticut Avenue would follow the original design and have the same materials and details as were proposed in the original design. Tr. at 29-30 (Jan. 6, 1997).

22. The proposed addition is necessary to provide the Kennedy-Warren with a more cohesive design. Tr. at 13 (Mar. 24, 1997). As described by Mr. Davidson, the existing building looks “odd” with its entrance tower and no south wing. Tr. at 33 (Jan. 6, 1997).

23. According to Mr. Davidson, the proposed south wing would “make a lot more sense out of the courtyard and the entrance and entrance tower” of the existing building. Tr. at 33 (Jan. 6, 1997). Mr. Davidson also testified that Hartman-Cox had evaluated alternative designs, including a smaller addition, and found the original design to be architecturally superior. Tr. at 162-63 (Mar. 13, 1997). The United States Commission on Fine Arts likewise determined that the original design was better than the alternative pushing the proposed addition back from Connecticut Avenue, as did the D.C. Preservation League. Tr. at 165-67 (Mar. 13, 1997).

24. Mr. Cox testified that “clearly, the building is unfinished. And I think leaving everything aside architecturally, clearly it’s better if it is completed and it is not simply the L-shaped wing looking like it’s had its arm chopped off.” Tr. at 162 (Mar. 13, 1997).

25. David Colby testified on behalf of the Office of Planning that the construction of the proposed addition would enhance the architectural and historical integrity of the existing building. *See* Tr. at 152 (Jan. 6, 1997); Ex. 48 (OP Report at 5) (“The concept of completing the landmark Kennedy-Warren Building as it was envisioned by the original architect in 1930 is an exceptional and appropriate design solution for this PUD.”).

26. Based on the testimony of Messrs. Cox and Davidson and the Office of Planning, the Commission finds that the failure to build on the open space at issue detracts from the Kennedy-Warren’s architectural qualities in the present time because the building appears as an incomplete composition.

27. The Commission finds that integrity of the landmark Kennedy-Warren building would be improved in the present by its completion, which would create the proper focus on the building’s architectural elements.

28. With the proposed PUD, there would be a lot occupancy of 59 percent. Tr. at 56 (Jan. 6, 1997). The Zoning Regulations in 11 DCMR § 403.2 allow a lot occupancy of 75 percent. Mr. Colby testified that with a 59 percent lot occupancy, the Kennedy-Warren site would have “a substantial amount of open space.” Tr. at 175 (Jan. 6, 1997).

29. With respect to the area as a whole, Mr. Colby testified that “there is a huge amount of open space because of Rock Creek Park and its tributaries and Connecticut Avenue . . .” Tr. at 178 (Jan. 6, 1997).

30. The proposed PUD retains and enhances the most significant parts of the open space in front of the Kennedy-Warren.

31. Mr. Cox testified, and the Commission finds, that open space portions of the site that contribute to its integrity at the present time are the courtyards, the notches in the building, the front entranceway, and the historic landscaping, all of which the proposed PUD would retain and enhance. *See* Tr. at 10-15 (Mar. 24, 1997).

32. The courtyard, which is the central organizing feature of the building and its principal open space, contains approximately 18,000 square feet of open space and would remain. Tr. at 56 (Jan. 6, 1997).

33. A large portion of the “open space” on the property already consists of paved parking ramps and access road leading to the existing Kennedy-Warren underground garage. This open space is hardscape and should not be considered green space. *See* Tr. at 53-55 (Mar. 24, 1997).

34. The Commission credits the testimony of Mr. Davidson that the south addition would reinforce the sense of the National Zoo being an open space within Connecticut Avenue. *See* Tr. at 161 (Mar. 13, 1997). The new wing would serve to frame and define the zoo entrance. *See* Tr. at 162 (Mar. 13, 1997).

35. The applicant submitted a landscape plan that addresses the design for the streetscape along Connecticut Avenue, the entry court, and semi-private garden areas for the residents of the building. The plans take into consideration the views from Connecticut Avenue as well as from the apartments. Tr. at 10-14 (Feb. 20, 1997). In addition, to address the environmental and aesthetic concerns discussed above in Findings of Fact Nos. 10-12 and 16, the applicant developed a tree preservation and rehabilitation plan in coordination with the National Park Service. Tr. at 14-21 (Feb. 20, 1997).

36. The proposed PUD fits within the historic character of the site as well as within the broader context of the Connecticut Avenue corridor and the types of apartment buildings that line the avenue up and down. Tr. at 53-54 (Jan. 6, 1997); Tr. at 9-14 (Mar. 24, 1997).

37. The existence of the original 1929-1930 architectural drawings for the historic Kennedy-Warren Apartments presents a unique opportunity to construct an addition of exemplary architecture that would enhance and preserve the architectural and historical integrity of the existing building and at the same time complete an unfinished historic landmark as originally designed and approved for construction. Ex. 48 (OP Report at 5-6); *see also* Tr. at 91 (Feb. 27, 1997) (The ANC chairperson, in presenting the ANC report, stated “we did like the idea of completing an unfinished landmark apartment building, and we were especially excited about the commitment to architecturally adhere to the original art deco design details.”).

38. The affected ANC, while recommending that the building plans for the proposed addition be modified to remove the southernmost projection, in part to create “more of a front lawn,” did not object to the addition being built on the lawn. Ex. 166; *see also* Ex. 170.

39. The completion of the south wing would help ensure the economic and physical viability of the existing landmark building for many years. *See* Ex. 21 (Application at 45).

40. The Historic Preservation Review Board (HPRB) reviewed and approved the proposed addition to the Kennedy-Warren with respect to its impacts at the present time. Tr. at 30-31 (Jan. 6, 1997). The HPRB is the administrative agency charged under Section 4 of the Historic Landmark and Historic District Protection Act of 1978, effective March 3, 1979 (D.C. Law 2-144, as amended; D.C. Code § 5-1003(b) (1994 Repl. & 1999 Supp.)), with protecting the integrity of historic structures and sites. The HPRB approval provides strong evidence that using a portion of the site for the proposed addition would not adversely affect the integrity of the structure or the site of the historic landmark.

41. The United States Commission of Fine Arts, pursuant to its authority under the Shipstead-Luce Act, approved May 16, 1930 (46 Stat. 366, as amended; D.C. Code § 5-410 (1994 Repl.)), to review permits for the construction of buildings adjacent to Rock Creek Park and the National Zoo and to recommend changes that “in its judgment are necessary to prevent reasonably avoidable impairment of the public values belonging to” these parks, likewise approved the design concept for the Kennedy-Warren addition. Tr. at 31 (Jan. 6, 1997); Ex. 125.

42. The National Park Service, which has jurisdiction over Klinge Valley, a part of Rock Creek National Park, testified that the project was acceptable. Tr. at 51-70 (Feb. 20, 1997); Ex. 255.

43. The National Capital Planning Commission (NCPC), the federal agency charged by law with protecting federal interests, reviewed the proposed PUD and associated rezoning and found that it would not adversely affect the Federal Establishment or other Federal interests in the National Capital nor be inconsistent with the Comprehensive Plan. Ex. 388.

44. The NCPC observed that “the public would benefit from seeing the completed historic design and plan by Joseph Younger of this notable landmark building. The addition would not detract from the qualities that qualified the Kennedy-Warren for listing in the National Register of Historic Places.” Ex. 388 (NCPC Report at 5).

45. The NCPC also stated that:

Another characteristic of Connecticut Avenue in this immediate area is the prominent entrance of the Zoo, a distinctive interjection of green space on Connecticut Avenue. Another significant element is the Klinge Valley stream park crossed by the Connecticut Avenue bridge just north of the Kennedy-Warren. Both of these features are Federal park land and green space and add

immeasurably to the quality and character of the Avenue. Neither would be adversely affected by the Kennedy-Warren addition, which does not limit the character and nature of either the Zoo or the stream valley land. If the south wing were constructed, the Kennedy-Warren would continue to be perceived as a physically – and architecturally – prominent apartment building surrounded on three sides by Federal park land and green space. Further, the Federal green park land would still be as significant and characteristic a feature of this stretch of Connecticut Avenue as it is now.

The qualities that qualified Cathedral Mansions for listing in the National Register would also not be adversely affected, since the relationship among the buildings in the complex, its architectural integrity, and its own setting would not be altered. This is due in good measure to the fact that Joseph Younger (the Kennedy-Warren's original architect) designed the footprint of the south wing of the Kennedy-Warren in concert with the footprint of the recently constructed Cathedral Mansions North. The two buildings – and their respective lawns along Connecticut Avenue – were designed to complement each other.

In consideration of these factors, the proposed rezoning would not adversely affect the character of the Federal property (Klingle Valley Park and the Zoo), Connecticut Avenue, nor the historic landmarks. It would not adversely affect the Federal Establishment or other Federal interests, nor be inconsistent with the Comprehensive Plan for the National Capital.

Ex. 388 (NCPC Report at 5-6).

46. The D.C. Preservation League (Ex. 323), Art Deco Society (Ex. 313), the Cleveland Park Historical Society (Ex. 48 (OP Report at 7)), and architectural historian James Goode (Ex. 113) supported the construction of the addition.

47. Mr. Goode, who emphasized the Kennedy-Warren as “the most elegant privately owned Art Deco building in Washington” in his 1988 book, *Best Addresses, a Century of Washington's Distinguished Apartment Houses*, stated that “The south wing will finally complete the front courtyard and will make the Kennedy-Warren one of the most outstanding apartment houses on the East Coast.” Ex. 113.

48. Based upon the above, the Zoning Commission finds that the open space upon which the applicant would construct the proposed PUD does not contribute to the integrity of the site or structure at the present time.

49. Since the proposed PUD would not be built on open space that contributes to the integrity of the site or structure at the present time, the Commission finds that the construction of the proposed addition, as conditioned in Z.C. Order No. 831, does not constitute infill at an “inappropriate location.”

The Comprehensive Plan Amendment Act of 1998

50. All of the provisions of the Comprehensive Plan that the Commission relied upon in its 1997 Order were re-enacted by the Council of the District of Columbia in the Comprehensive Plan Amendment Act of 1998, effective April 27, 1999 (D.C. Law 12-275; 46 DCR (November 3, 2000)).

51. The CPC argues that the amendments to sections 1407.4(d), 1409.4(a)(3)(B), 1403.7(a)(3), 1407.3(b)(6), 1407.1(d), and 1401.6(b) underscore the importance the Comprehensive Plan places on the preserving the Kennedy-Warren lawn and clarify policies relating to housing near Metrorail stations. The Commission makes the following findings with respect to those provisions:

Settings for Historic Landmarks; § 1407.4(d)

52. Before the amendment, section 1407.4(d) stated:

The Zoning Commission and the Board of Zoning Adjustment shall consider the effects of a pending application on the ward's historic landmarks and districts, and shall consider any negative effects to constitute an adverse or detrimental impact.

53. The amendment requires the same for the open spaces contributing to historic landmark and historic district settings. It reads:

The Zoning Commission and the Board of Zoning Adjustment shall consider the effects of a pending application on the ward's historic landmarks and districts and open spaces contributing to their settings, and shall consider any negative effects to constitute an adverse or detrimental impact.

54. The Commission's Findings of Fact Nos. 9-17, 28-35, 38, 42-43, 45, and 48-49 in this order and Findings of Fact Nos. 17, 19, 21, 22, 43-46, 48, 49, 59, 62, 65(f), and 68(e) in Z.C. Order No. 831 address the effects of the application on the open spaces contributing to the ward's historic landmarks and districts and will not be repeated here.

Development Adjacent to Parks; § 1409.4(a)(3)(B)

55. Section 1409.4(a)(3)(B) lists examples of locations along Connecticut Avenue that are inappropriate for infill development.

56. Before the amendment, it referenced the few large interior spaces "behind some apartment buildings."

57. After the amendment, it references the few large interior spaces “behind historic apartment buildings or adjacent to park lands.”

58. The Commission’s Findings of Fact regarding the effects of the application on open spaces, listed above in Finding No. 54, also pertain to location of infill development adjacent to parklands and will not be repeated here.

Development Adjacent to Parks; § 1403.7(a)(3)

59. Section 1403.7(a)(3) also concerns development next to parks.

60. Before the amendment, it stated a policy of “minimizing any development adjacent or proximate to the ward’s stream valley parks (e.g., Rock Creek Park and Glover Archbold Park)” that has any negative impact on the parkland.

61. The amendment added the phrase “and adjacent federally-owned tributary valleys or other parklands” to the reference to Rock Creek and Glover Archbold Parks.

62. The Commission’s Findings of Fact in this order and in Z.C. Order No. 831 concern the proposed PUD’s effects on Klinge Valley, a federally-owned tributary valley.

Negative Impacts on Parks; § 1407.3(b)(6)

63. Section 1407.3(b)(6) requires the Commission to evaluate development proposals within or adjacent to historic landmarks or historic districts to ensure that the design is compatible with, and that there are no adverse effects on, the affected landmark or district. Development must respect the character of a landmark through appropriate use of materials, building scale, architectural detail, and other design characteristics.

64. The amendment added language requiring that development minimize negative impacts on adjacent or nearby parklands through appropriate use of materials, building scale, architectural detail, and other design characteristics.

65. The Commission’s Findings of Fact in this order and in Z.C. Order No. 831, listed above in Finding No. 54, address the impacts of the proposed PUD and its materials, building scale, architectural detail, and other design characteristics on adjacent parklands.

Buffer requirements; § 1407.1(d)

66. Before the amendment, section 1407.1(d) read:

Preservation of the ward’s historic resources, landmarks, districts, and places, whether or not officially designated, strengthens the historic integrity of the ward, maintains the ward’s existing character, and preserves Ward 3 as an attractive and desirable part of the city in which to live.

67. The amendment added the sentence:

Because many of these historic resources are adjacent to federal and local park lands, an adequate historic preservation strategy will additionally help accomplish the goal of developing adequately buffered areas along the edges of these park lands.

68. The Commission's Findings of Fact in this order and in Z.C. Order No. 831, listed above in Finding No. 54, address the impacts on and buffering of the parkland adjacent to the Kennedy-Warren.

Housing Near Metro Stations; § 1401.6(b)

69. Before the amendment, this provision read:

The priority for stimulating and facilitating a variety of commercial, retail, and residential development investments appropriate to selected Metrorail station areas outside the Central Employment Area should be consistent with the Land Use Element and accompanying maps.

70. The amendment added the sentence:

Residential development adjacent to Metrorail stations in the ward should include "starter homes" and owner-occupied housing.

71. The proposed PUD would provide 166 rental apartments within walking distance of the Cleveland Park and Woodley Park Metrorail stations.

72. Under 11 DCMR § 2403.9(f), the provision of new housing is a significant PUD benefit.

73. The Housing Element of the Comprehensive Plan (10 DCMR ch.3) has as a major policy the stimulation of a wide range of housing choices and strategies, both through the preservation of sound older stock and the production of new units. Tr. at 53 (Jan. 6, 1997). The Commission finds that the proposed PUD would both aid in the preservation of the existing apartment building and result in the production of new apartment units.

74. The Kennedy-Warren is located across Connecticut Avenue from several large apartment buildings. Ex. 48 (OP Report at 2, 4).

75. The immediate vicinity of the site is characterized by large apartment buildings dating from the first two quarters of the 20th century. The proposed PUD would also be consistent with the large linear area spanning Connecticut Avenue from north of Dupont Circle to the District boundary line at Chevy Chase Circle, which is likewise lined with medium and high density

apartment buildings. Tr. at 30 (Jan. 6, 1997); Tr. at 11-13 (Mar. 24, 1997); Ex. 21 (Application at 48-49).

76. Unlike many of the apartment buildings in the Connecticut Avenue corridor, the Kennedy-Warren site is isolated from low density development by Klinge Valley and the National Zoo. Ex. 21 (Application at 49).

77. Steven Sher, who was qualified as an expert in urban planning, described the proposed PUD as “an apartment house in an apartment house neighborhood.” Tr. at 52 (Jan. 6, 1997).

78. The proposed PUD would also be located on a major arterial. The Land Use Element of the Comprehensive Plan provides that high density residential land use areas are generally located adjacent to major arterial streets. 10 DCMR § 1103.4.

79. The Office of Planning report, which recommended approval of the proposed PUD, states that “the proposed project is designed to provide additional rental units to the District of Columbia’s rental housing market which is supported by numerous policies and objectives in the Comprehensive Plan.” Ex. 48 (OP Report at 3).

80. The Office of Planning found that “equally important” to the provision of new housing is the fact that the “units will be available for rent rather than ownership thereby meeting the greatest demand for housing under current market conditions.” Ex. 48 (OP Report at 5).

81. The ANC report recommends that it should be a condition of the proposed PUD approval that for not less than 15 years after the issuance of the south wing’s certificate of occupancy that the owner not convert the residential units of the combined building to anything other than long-term rental. Ex. 166 (ANC Report at 4).

82. Based on the above, the Commission finds that the rental housing to be provided by the proposed PUD would be appropriate to the area adjacent to the Cleveland Park and Woodley Park Metrorail stations.

CONCLUSIONS OF LAW

The Great Weight Requirement for the OP Report and ANC Report

1. The Office of Planning report, which found that the proposed PUD would not be inconsistent with the Comprehensive Plan and the General Land Use Map high density designations for the site and that the construction of the proposed addition would enhance the architectural and historical integrity of the existing Kennedy-Warren building at the present time, and which recommended approval of the proposed PUD and associated rezoning, is entitled under D.C. Code § 5-412.4 (1994 Repl.) to great weight.

2. The ANC's recommendations supporting the PUD subject to conditions, including ameliorative measures that address the adverse effects that the low density provision in 10 DCMR § 1407.3 seeks to prevent, are also entitled to great weight. *See* Section 3 of the Comprehensive Advisory Neighborhood Commissions Reform Amendment Act of 2000, effective June 27, 2000 (D.C. Law 13-135, 47 DCR (December 8, 2000) (to be codified at D.C. Code § 1-261(d)(3)(A)))(1999 Repl.).

3. For the reasons stated in Z.C. Order No. 831, as supplemented by this order, the Zoning Commission does not find the ANC's recommendation that the proposed building be pushed back or that the southernmost projection eliminated persuasive since the proposed design better preserves the architectural and historical integrity of the site. The Zoning Commission concludes that the proposed project, subject to the guidelines, conditions, and standards set forth in Z.C. Order No. 831, would be appropriate to the site and would not result in adverse effects.

The Low Density Provision

4. Based on its gross floor area and the number of apartment units to be provided, the proposed south wing would not be a "low density" development for purposes of 10 DCMR § 1407.3(c).

5. Since the National Zoo and Rock Creek National Park, which includes Klinge Valley, are landmarks, they should be considered landmark parks for purposes of section 1407.3(c).

6. Although separated from the National Zoo and Klinge Valley by Jewett Street, the site of the PUD is "adjacent" to the National Zoo and Klinge Valley for purposes of section 1407.3(c).

7. Section 1407.3(c), which requires that development adjacent to parks that are designated landmarks, be low density, is contained in the Preservation and Historic Feature Element of the Ward 3 Element of the Comprehensive Plan.

8. Read in its entirety, the purpose of section 1407.3(c) is to protect parks that are designated landmarks from potential harm to their environment and aesthetics, including to protect unstable soils; eliminate runoff potential; promote a green buffer between the built environment and the natural settings of the parks; avoid any adverse effects on the landmarks, including adverse effects on water quality, flora, and fauna; and minimize any intrusion on the views from these parks.

9. The guidelines, conditions, and standards established in Z.C. Order No. 831 will fulfill the purpose of section 1407.3(c) by protecting the National Zoo and Klinge Valley from potential harm to their environment and aesthetics.

10. The closure of Jewett Street and the creation of the Tree Preservation Zone between the two parks and the rear of the proposed PUD promotes a green buffer as provided in section 1407.3(c).

11. Section 112.1(b) of the Comprehensive Plan provides that “The interpretation and implementation of any element should necessarily rely upon, and be respectful of, the objectives and policies of the other elements.” Under section 112.1(c):

An element may be tempered or defined by one (1) or more of the other elements. This may occur both within one (1) element and between elements. Since the Land Use element integrates the policies and objectives of all other District elements, it should be given greater weight than the other elements.

12. The proposed PUD is not inconsistent with the Ward 3 Element of the Comprehensive Plan in that it fulfills two major Ward 3 policies and goals, increased housing in appropriate locations and protection of green space.

13. The proposed PUD’s provisions for buffering and other ameliorative measures advance the purposes of section 1407.3(c), which are to prevent negative impacts upon the environment and aesthetics of parks that are designated landmarks.

14. As the Commission previously found in Finding of Fact No. 65 of Z.C. Order No. 831, the proposed PUD and associated rezoning are consistent with four major themes of the Comprehensive Plan, including stabilizing the District’s neighborhoods, respecting and improving the physical character of the District, urban design, and historic preservation. *See* 10 DCMR § 101.1.

15. The Commission concludes that the application of the low density provision in section 1407.3(c) is limited by the provisions of the Comprehensive Plan that give greater weight to the Land Use Element, encourage high density development in the Connecticut Avenue corridor, and encourage increased residential development near Metrorail stations and, further, by the ameliorative measures required by the guidelines, conditions, and standards established in Z.C. Order No. 831.

16. Based upon its original findings and conclusions, as supplemented by these findings and conclusions on remand, the Commission concludes that the proposed PUD and associated rezoning are not inconsistent with the Comprehensive Plan as a whole.

The Green Space Provisions

17. As discussed by the Court of Appeals in *Cathedral Park Condominium Committee v. District of Columbia Zoning Commission*, 743 A.2d 1231, 1243-44 (D.C. 2000), the Commission concludes that if the Kennedy-Warren green space does not contribute to the integrity of the site or structure in the present time, then sections 1407.3(d) and 1409.4(a)(3) do not prohibit infill in that space.

18. The Commission concludes, as did the Office of Planning and ANC 3-C, that the original design for the site is a relevant consideration in determining whether the green space contributes

to the integrity of the site because the original design preserves the architectural and historical integrity of the existing building in the present.

19. The green space upon which the proposed south wing addition would be built was not created “as a response to the building style and zoning regulations in the 1920s” as provided in 11 DCMR § 1407.3(d), but resulted from an economic decision made in the context of the Great Depression to not complete the building. Therefore, the green space at issue is not the type of open space that section 1407.3(d) recognizes as contributing to the integrity of a site or structure.

20. The Commission concludes the green space upon which the south wing would be built does not contribute to the integrity of the site at the present time because the addition would provide the Kennedy-Warren with a more cohesive design in the present, retain and define the most architecturally significant portions of the green space, and frame and define the National Zoo entrance.

21. Section 1409.4(a)(3) requires “stringent protection against infill at inappropriate locations,” including the swaths of green space fronting the Kennedy-Warren, by means of “careful controls.” The Zoning Commission, through the guidelines, conditions, and standards established in Z.C. Order No. 831, has provided the necessary careful controls. The proposed PUD and associated rezoning are therefore not inconsistent with section 1409.4(a)(3).

The Comprehensive Plan Amendment Act of 1998

22. The Comprehensive Plan Amendment Act of 1998, which did not amend the Comprehensive Plan provisions relied upon by the Commission in Z.C. Order No. 831, made minor changes to sections 1401.6(b), 1403.7(a)(3), 1407.1(d), 1407.4(d), 1407.3(b)(6), and 1409.4(a)(3)(B).

23. With the exception of the amendment to section 1401.6(b) relating to starter homes and owner-occupied housing and section 1409.4(a)(3)(B) relating to infill at inappropriate locations, the Commission’s findings in Z.C. Order No. 831 addressed the proposed PUD’s impacts on settings for historic landmarks, development adjacent to parks, negative impacts on parks, and buffering along parklands.

24. The instant order responds to the Court of Appeals instructions on remand with respect to amplifying the Commission’s findings relating to the location of infill development and addresses the new housing provision.

25. Conclusions of Law Nos. 17-21 address the location of infill development. With respect to the new housing provision, the Commission concludes that the construction of new apartment units is not inconsistent with section 1401.6(b). Section 1401.6(b) provides for stimulating and facilitating a variety of residential developments appropriate to areas adjacent to Metrorail stations. The rental housing to be provided by the south wing addition is appropriate to Connecticut Avenue corridor served by the Cleveland Park and Woodley Park Metrorail stations.

26. None of the pertinent amendments would require the Commission to disapprove the proposed PUD and associated rezoning or to modify the guidelines, conditions, and standards of approval in Z.C. Order No. 831.

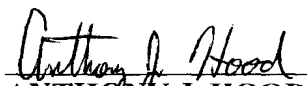
DECISION

Based upon the above Findings of Fact and Conclusions of Law, the Zoning Commission for the District of Columbia hereby orders Zoning Commission Order No. 831, effective December 19, 1991, as modified by the addition of above Findings of Fact and Conclusions of Law, reinstated. The planned unit development and the associated change of zoning from R-5-D to R-5-E for Lot 1 (formerly Lot 801) in Square 2214 is approved, subject to the guidelines, conditions, and standards set forth in Zoning Commission Order No. 831.

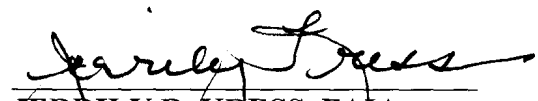
The proposed order on remand was **approved** by the Zoning Commission at its public meeting on October 16, 2000, by a vote of 4:1 (Herbert M. Franklin, Kwasi Holman, Anthony J. Hood, and John G. Parsons (by absentee vote), to approve; Carol J. Mitten, to deny).

This final order on remand was **approved** by the Zoning Commission at its public meeting on December 11, 2000, by a vote of 4:1 (Herbert M. Franklin, John G. Parsons, Anthony J. Hood, and Kwasi Holman, to adopt; Carol J. Mitten, to deny).

In accordance with the provisions of 11 DCMR § 3028, this order shall become final and effective upon publication in the D.C. Register; that is, on DEC 22 2000.



ANTHONY J. HOOD
CHAIRPERSON
Zoning Commission



JERRILY R. KRESS, FAIA
DIRECTOR
Office of Zoning